

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:)	
)	
Fan, et al.)	Confirmation No.: 1759
)	
Application No.: 09/737,294)	Group Art Unit: 2617
Patent No.: 7,738,878)	
)	
Filing Date: 12/13/2000)	
Issue Date: 6/15/2010)	
)	
For: Method for Obtaining Location Information)	
of a Mobile Unit Using a Wireline)	
<u>Telephone Number</u>)	

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Request for Reconsideration of Patent Term Adjustment Indicated in Issue Notification

Dear Sir:

In response to the Issue Notification, which established an issue date of 6/15/2010, Petitioners respectfully request review of the calculated Patent Term Adjustment to ensure that an error was not made. This Request/Petition is being filed pursuant to 37 CFR §1.705(d) and in accordance with the requirements of paragraphs (b)(1) and (b)(2) of the same section. Please consider the following remarks.

REMARKS

1. This request, filed under 37 CFR §1.705(d), is for reconsideration of the patent term adjustment indicated in the Issue Notification. Petitioners submit that, at issuance, the patent term adjustment should have reflected a revised patent term adjustment that was greater than the amount of patent term adjustment indicated in the notice of allowance and greater than the amount of patent term adjustment indicated in the issue notification. These issues raised herein are due to: 1) three-year violations under 37 C.F.R. §1.702(b); and 2) a violation of the 4 month response time under 37 C.F.R. §1.702(a). It would have been untimely to raise either of these matters prior to issuance because: 1) the violation of the 4-month response time appeared to have been properly accounted for in the USPTO's Patent Term Adjustment analysis at the time of the notice of Allowance but seems to have been improperly accounted for when the PTA calculation was re-accomplished in conjunction with the Issue Notification; 2) the three year violations are not calculated until the notice of issuance is mailed; and 3) the three-year violations may have overlapped with the 4-month response time delay and caused an error in the calculation of PTA that accompanied the Issue Notification.

2. Petitioners submit herewith, as an attachment, a "Statement of the Correct Patent Term Adjustment: Basis(es) under 1.702 for the Adjustment," in compliance with 37 CFR 1.705 (b)(2).

3. The instant issued patent is not subject to a terminal disclaimer.

4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 1.704 (37 C.F.R. 1.705(b)(2)(iv)), there were as follows (37 C.F.R. 1.705(b)(2)(iv)(A)):

- 1/11/2005, Applicant delay of 77 days in filing response to non-final office action;
- 11/18/2005, Applicant delay of 62 days in filing notice of appeal; and
- 11/28/2007, Applicant delay of 6 days in filing response to non-final office action.

5. The fee set forth in 1.18(e) (\$200.00), required by 37 C.F.R. 1.705(b)(1), is paid as follows: please charge Deposit Account 50-4157 for the \$200.00 fee. Additionally, at any time during the review of this request/petition, please charge any fees required or credit any over payment to Deposit Account 50-4157 pursuant to 37 CFR 1.25.

Respectfully submitted,
WAGNER BLECHER LLP

Dated: August 13, 2010

/John P. Wagner, Jr./

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I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300 or via electronic submission.

Typed Name: Emilie Benschoter, Paralegal

Date of Deposit: 13 Aug 2010

Signature: /Emilie Benschoter/

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STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT: BASIS(ES) UNDER
1.702 FOR THE ADJUSTMENT (37 C.F.R. 1.705(b)(2)(i) and (ii))

1. This statement is being submitted in support of the "Request for Reconsideration of Patent Term Adjustment Indicated in Issue Notification" to which this statement is attached.

37 C.F.R. 1.705(b)(2)(i)

2. The patent term adjustment shown on the Issue Notification is: 2188 days. It is respectfully suggested that the correct patent term adjustment under 1.702 is: at least 2345 days.

37 C.F.R. 1.705(b)(2)(ii)

3. Under 1.705(b)(2)(ii) applicant must set forth: "The relevant dates as specified in 1.703(a) through(e) for which an adjustment is sought and the adjustment as specified in 1.703(f) to which the patent is entitled."

The three year date begins on 12/13/2003, which is three years after the date of application but overlaps with 14-month delay until the mailing of the non-final office action on 7/26/2004 stops the clock on the 14-month delay. It appears that 3-year delay should run from 7/26/2004 until issuance at 6/15/2010 with a period of tolling from 11/18/2005 (filing of notice of appeal) until 8/22/2007 (non-final office action issued following appeal brief). Moreover, during this period of tolling, it appears that the Office failed to comply with the 4-month response rules and to the appeal brief (filed 4/12/2006) until 11/09/2006. Petitioners submit that the correct calculation would include:

894 days 14-month violation delay (2/13/2002 - 7/26/2004);

480 days 3-year violation delay (7/26/2004 - 11/18/2005);

88 days of 4-month violation delay (8/13/2006 - 11/09/2006); and

1028 days of 3-year violation delay (8/22/2007 - 6/15/2010).

This is a total of 2490 days of USPTO delay. Subtracting Applicant delays of 6 days, 62 days, and 77 days, yields a balance of 2345 days, which is 157 days longer than the 2188 days that were offered in the issue notification.

Additionally, it is possible that there may be more USPTO delay due to Petitioners during the time period from 1/02/2007 to 8/22/2007. 127 days are indicated in the USPTO's PTA adjustment and appear to be related to this time period. However, as Petitioners were unable to discern what this was based upon, this period of time has not been included in the Petitioners above calculation of 2345 days.

Accordingly, and in light of the above discussion, the adjustment is sought for the following date range: between 7/26/2004 and 6/15/2010. Adjustment to be made for this date range: at least 157 days.

Respectfully submitted,

WAGNER BLECHER LLP

Dated: August 13, 2010

/John P. Wagner, Jr./

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Registration No.: 35,398

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I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300 or via electronic submission.

Typed Name: Emilie Benschoter, Paralegal

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